

GENERAL TERMS & CONDITIONS

Individuals (IND FEB 2008)

CONTENTS	PAGE
1. Definitions.....	1
2. Order of Precedence	1
3. Payment and Administration.....	1
4. Taxes – Fixed-Price, Federal, State, and Local Taxes.....	1
5. Cooperating with DOE Office of Inspector General.....	1
6. Public Release of Information	1
7. Confidentiality of Information.....	1
8. Compliance with Laws.....	1
9. Prohibited Items at Y-12.....	2
10. DOE Security Badges and Clearance Requirements	2
11. Independent Contractor.....	2
12. Standards of Conduct.....	3
13. Conflicts of Interest.....	3
14. Drug-Free Workplace.....	4
15. Insurance	4
16. Consideration.....	4
17. Travel Reimbursement.....	4
18. Invoicing.....	4
19. Assignment	5
20. Resolution of Disputes	5
21. Termination.....	5
22. Severability	5
23. Enforcement.....	5
24. Clauses Incorporated by Reference	6

1. DEFINITIONS. The following terms have the meanings below:

(a) Government means the United States of America and includes the U. S. Department of Energy (DOE) or any duly authorized representative thereof.

(b) Company means Babcock and Wilcox Technical Services Y-12, LLC (B&W Y-12) acting under Contract No. DE-AC05-00OR22800.

(c) Seller (or “you”) means the person who has entered into this Agreement with Company.

(d) Agreement means Purchase Order, Subcontract, or Modification thereof.

(e) Subcontract Administrator means Company’s cognizant Procurement representative.

2. ORDER OF PRECEDENCE. Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) The Agreement, (2) Special clauses incorporated therein, (3) these General Terms and Conditions, (4) Statement of Work.

3. PAYMENT AND ADMINISTRATION. Company shall make payments under this Agreement from Government funds advanced and agreed to be advanced by DOE, and not from its own assets. This Agreement may be assigned, in whole or in part, to DOE or its designee(s), and to the extent of such assignment and notice thereof to Seller, Company shall have no further responsibilities hereunder.

4. TAXES – FIXED PRICE, FEDERAL, STATE AND LOCAL TAXES. (a) Definitions. As used throughout this clause, the following terms shall have the meaning set forth below:

(1) The term “direct tax” means any tax or duty directly applicable to the completed supplies or services covered by this subcontract, or any other tax or duty from which the Seller or this transaction is exempt. It includes any tax or duty directly applicable to the importation, production, processing, manufacture, construction, sale, or use of such supplies or services; it also includes any tax levied on, with respect to, or measured by sales, receipt from sales, or use of the supplies or services covered by this subcontract. The term does not include transportation taxes, unemployment compensation taxes, social security taxes, income taxes, excess-profits taxes, capital stock taxes, property taxes, and such other taxes as are not within the definition of the term “direct tax” as set forth above in this paragraph.

(2) The term “subcontract date” means the effective date of this subcontract if it is a negotiated subcontract, or the date set for the opening of bids if it is a subcontract entered into as a result of formal advertising.

(b) Federal Taxes. Except as may be otherwise provided in this subcontract, the subcontract price includes all applicable Federal taxes in effect on the subcontract date.

(c) State or Local Taxes. Except as may be otherwise provided in this subcontract, the subcontract price does not include any State or local direct tax in effect on the subcontract date. For subcontractors providing and installing tangible personal property, which becomes part of real property, the subcontract price should include all state and local direct taxes on such installed tangible personal property.

(d) Evidence of Exemption. The Company agrees, upon request of the Seller, to furnish a tax exemption certificate or other similar evidence of exemption with respect to any direct tax not included in the subcontract price pursuant to this clause; and the Seller agrees, in the event of the refusal of the applicable taxing authority to accept such evidence of exemption, (1) promptly to notify the Company of such refusal, (2) to cause the tax in question to be paid in such manner as to preserve all rights to refund thereof, and (3) if so directed by the Company to take all necessary action, in cooperation with and for the benefit of Government, to secure a refund of such tax (in which event the Company agrees to reimburse the Seller for any and all reasonable expenses incurred at its direction)

(e) Price Adjustment. If, after the subcontract date, the Federal Government or any State or local Government either (1) imposes or increases (or removes an exemption with respect to) any direct tax, or any tax directly applicable to the materials or components used in the manufacture of furnishing of the completed supplies or services covered by this subcontract, or (2) refuses to accept the evidence of exemption, furnished under paragraph (d) hereof, with respect to any direct tax excluded from the subcontract price, and if under either (1) or (2) the Seller is obliged to and does pay or bear the burden of any such tax (and does not secure a refund thereof), the subcontract price shall be correspondingly increased. If, after the subcontract date, the Seller is relieved in whole or in part from the payment or the burden of any direct tax included in the subcontract price, or any tax directly applicable to the materials or components used in

the manufacture or furnishing of the completed supplies or services covered by this subcontract, the Seller agrees promptly to notify the Company of such relief, and the subcontract price shall be correspondingly decreased or the amount of such relief paid over to the Company for the benefit of the Government. Invoices or vouchers covering any increase or decrease in the subcontract price pursuant to the provisions of this paragraph shall state the amount thereof, as a separate added or deducted item, and shall identify the particular tax imposed, increased, eliminated, or decreased.

(f) Refund or Drawback. If any tax or duty has been included in the subcontract price or the price as adjusted under paragraph (e) of this clause, and if the Seller is entitled to a refund or drawback by reason of the export or reexport of supplies covered by this subcontract, or of materials or components used in the manufacture or furnishing of the completed supplies or services covered by this subcontract, the Seller agrees that he will promptly notify the Company thereof and that the amount of any such refund or drawback obtained will be paid over to the Company for the benefit of the Government or credited against amounts due from the Company under this subcontract: Provided, however, That the Seller shall not be required to apply for such refund or drawback unless so requested by the Company.

5. COOPERATING WITH DOE OFFICE OF INSPECTOR GENERAL. Seller shall cooperate fully and promptly with requests from the DOE Office of Inspector General (OIG) for information and data relating to DOE programs and operations (i) comply with requests by the OIG for interviews and briefings and provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements, and (ii) not impede or hinder another employee's cooperation with the OIG.

6. PUBLIC RELEASE OF INFORMATION. Except as provided in the Statement of Work, work description, statutory requirement, or other provisions of this Agreement, no public release of information, including, without limitation, data, photographs, sketches, and advertising, announcements, denials, or confirmations related to the work under this Agreement shall be made without the prior written approval of the Subcontract Administrator. Any request for approval shall include identity of the specific media as well as other pertinent details of the requested release.

7. CONFIDENTIALITY OF INFORMATION. (a) To the extent that work under this Agreement requires that Seller be given access to confidential or proprietary business, technical, or financial information belonging to the Government, the Company, or other parties, Seller shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Company in writing. The foregoing obligations, however, shall not apply to (1) information which, at the time of receipt by Seller is in public domain; (2) information which is published after receipt thereof by Seller or otherwise becomes part of the public domain through no fault of Seller; (3)

information which Seller can demonstrate was in its possession at time of receipt thereof and was not acquired directly or indirectly from Government or Company; (4) information which Seller can demonstrate was received by it from a third party who did not require Seller to hold it in confidence.

(b) Seller agrees, if requested by Company or DOE, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to Seller under this Agreement, and to supply a copy of such agreement to Company.

(c) Seller agrees that upon request by Company or DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities.

8. COMPLIANCE WITH LAWS. (a) In performing work under this Agreement, the Seller shall comply with the requirements of applicable Federal, State, and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency.

(b) Except as otherwise directed by the Company, the Seller shall procure all necessary permits or licenses required for the performance of work under this Agreement.

9. PROHIBITED ITEMS AT Y-12. (a) General. The prohibitions in this clause apply at the Y-12 National Security Complex and at sites leased by B&W Y-12.

(b) Alcohol. Alcoholic beverages are prohibited.

(c) Cell phones. Cellular telephones that are not owned by the Government or B&W Y-12 are prohibited without prior written approval obtained through the Subcontract Technical Representative (STR). Cellular telephones may be secured in the owner's private vehicle within parking areas at the Y-12 National Security Complex and at leased sites. They should remain secured at all times while within the Blue Line (229 boundary) of Y-12 unless required to report a personal emergency within the 229 boundary. A personal emergency is an immediate need for assistance (e.g., an after-hours car – deer accident, a car breakdown, an acute health condition such as a heart attack, etc.). In a personal emergency, the personal cellular telephone should be used to contact the Y-12 Plant Shift Superintendent's Office (574-7172). Calling 911 from a cellular telephone will not notify B&W Y-12 of an emergency, though Company emergency resources would be the closest respondent. Therefore, calling 911 instead of 574-7172 is inappropriate.

(d) Dangerous instruments. Instruments likely to produce substantial injury to persons or property are prohibited. This prohibition includes:

- Bows and arrows
- Explosive devices
- Firearms
- Knives with blades longer than three inches
- Martial arts weapons and equipment
- Weapons or simulated weapons

(e) Flash memory data storage devices. Memory devices [such as Universal Serial Bus (USB) flash memory drives, USB memory keys, memory sticks, etc.] are prohibited without prior written approval obtained through the STR. Approval will

require that the device be labeled according to B&W Y-12 guidance pertaining to data content type and thereafter properly accounted for and destroyed if required.

(f) Pagers. Two-way pagers are prohibited. One-way pagers and pagers that have the capability for the user to select and transmit one of several manufacturers' pre-programmed responses (for example, "Message received") are allowed.

(g) PDA's. Personal digital assistants [also called personal electronic devices (PEDs)] such as Blackberry, Piarea, Hewlett-Packard Palmtop Computer, and Hewlett-Packard Jomada Palmtop, are prohibited without prior written approval obtained through the STR.

(h) Transmitting, recording and photographic equipment. Transmitting, recording, or photographic equipment is prohibited without prior written approval obtained through the STR. Such equipment includes, but is not limited to:

- Cameras
- Portable tape players
- Portable two-way radios
- Tape recorders
- Video recorders

(i) Wireless devices. The following devices are prohibited without prior written approval obtained through the STR:

- Cordless telephones
- Devices with infrared capability
- Global Positioning System (GPS) units
- Wireless local area networks (WLAN)
- Wireless mice and keyboards
- Wireless-enabled computers, including laptop computers
- Wireless radios (such as Nextel)
- Wireless wide area networks
- Wireless audio-visual support equipment (such as wireless microphones)
- Wireless scanners and bar code readers
- Wireless tags
- Wireless special purpose sensors and other wireless instruments
- Wireless data acquisition equipment and data loggers

10. DOE SECURITY BADGES AND CLEARANCE REQUIREMENTS. (a) A security badge issued by the Company to the Seller is Government property. The Seller must return the badge upon expiration of this agreement or when access to the Y-12 National Security Complex is no longer needed. Sellers holding an L or Q clearance must attend a security termination debriefing conducted by the Company when returning badges. However, in all cases, the Personnel Security Clearance Office should be notified by the Seller within one working day of a termination of employment or need for access to the Complex if the employee holds an L or Q clearance in order to provide notification to DOE/NNSA within two working days.

(b) The Seller must immediately notify the Subcontract Administrator in writing when a badge is lost or stolen. The Seller must report in person to the Y-12 Visitor Center Badging Office (or contact PSS after hours/weekends) to complete an affidavit concerning the loss or theft and to obtain a replacement badge.

(c) The Seller must complete the Company *Subcontractor Personnel Exit Checklist*, Form UCN- 4452S, before exiting the site. The Seller must take the completed Checklist and badge to the Visitor Center badging office. If the Y-12 Visitor Center is closed (hours of operation are Monday-Thursday 6:00 a.m. to 4:30 p.m.) the Seller may leave the Checklist and badge with the STR. (In such cases alternate debriefing arrangements will be made for employees holding an L or Q clearance.) The Checklist, signed by the STR or an authorized representative of Personnel Security, is acceptable proof to the Company that a badge has been returned.

(e) Seller's payment may be withheld until all requirements of this clause have been met. Failure by employees of the Seller and its lower-tier subcontractors to return badges will result in a charge of \$500 per badge, to be withheld from payment or billed to the Seller. This \$500 charge will not be assessed against badges that are lost or stolen during performance if replacement badges are issued to allow Seller or lower-tier subcontractor employees to return to work. DOE/NNSA directives require the termination of an employee security clearance within two working days of termination of employment or need for access to the Complex.

11. INDEPENDENT CONTRACTOR. (a) Neither this Agreement nor Seller's performance hereunder shall constitute or create an employee/employer relationship. Seller shall act solely as an independent contractor, not as an employee or agent of Company. As an independent contractor the Seller shall not be entitled to Workers Compensation or any other employee benefits or other insurance protection provided by the Company. However, if the Seller was previously a bona fide employee of the Company or an affiliate, the retirement and other benefits that Seller may be entitled to as a result of said previous employment shall continue uninterrupted in accordance with the terms and conditions of each applicable benefit plan or other program, and such benefits shall not be affected by nor have any relationship to this Agreement.

(b) Seller's responsibilities are limited to providing services and Seller has no authority to obligate the Company to any agreement or to exercise any supervision or direction over Company's employees.

12. STANDARDS OF CONDUCT. (a) It is the policy of the Company that its acquisition and retention of business be conducted in accordance with the highest standards of honesty and integrity. Sales of its products and services must be free from even a perception that favorable treatment was sought or received, or that questionable activities were engaged in or condoned. Purchases of products and services must be conducted with the same high standards. Severe criminal and civil penalties may be imposed on the individuals involved for violation of federal and state laws that affect the conduct of our business.

(b) Company policies and procedures are designed to ensure compliance with applicable laws and regulations. These policies and procedures are embodied in the Company's *Employee Handbook: Standards of Conduct and Business Ethics* booklet. Even though you are an independent contractor, and not an employee, your performance of services may involve acts on your part which may be attributable to the

Company and for which the Company might be held liable. For that reason, you must be made aware of and understand Company policies and procedures as they relate to your performance.

(c) The *Employee Handbook: Standards of Conduct and Business Ethics* booklet contains provisions which directly affect the manner of your performance. Your attention is specifically called to the section of the booklet entitled *Guidelines for Specific Situations*.

(d) By execution of this agreement, you acknowledge that you have received and read a copy of the *Standards of Conduct and Business Ethics* and that you understand its requirements and agree to comply with them at all times.

13. CONFLICTS OF INTEREST. (a) Purpose. The purpose of this clause is to ensure that the Seller (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this Agreement, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this Agreement.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Seller and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Seller") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Seller's Work Product. (i) The Seller shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Seller's performance of work under this Agreement for a period of five years after the completion of this Agreement. Furthermore, unless so directed in writing by the Subcontract Administrator, the Seller shall not perform any advisory and assistance services work under this Agreement on any of its products or services or the products or services of another firm if the Seller is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Seller from competing for follow-on Agreements for advisory and assistance services.

(ii) If, under this Agreement, the Seller prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Seller shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Seller shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Subcontract Administrator, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Seller from offering or selling its standard and commercial items to the Company or the Government.

(2) Access to and use of information. (i) If the Seller, in the performance of this Agreement, obtains access to information, such as Company or DOE plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or

otherwise made available to the public, the Seller agrees that without prior written approval of the Subcontract Administrator it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Company or DOE based on such information for a period of six months after either the completion of this Agreement or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to DOE which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Company or DOE.

(ii) In addition, the Seller agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this Agreement, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Seller may use technical data it first produces under this Agreement for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights-in-data, and security provisions of this Agreement.

(c) Disclosure after award. (1) The Seller agrees that, if changes, including additions, to the facts disclosed by it prior to award of this Agreement, occur during the performance of this Agreement, it shall make an immediate and full disclosure of such changes in writing to the Subcontract Administrator. Such disclosure may include a description of any action which the Seller has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Company may, however, terminate the Agreement for convenience if it deems such termination to be in the best interest of the Government.

(2) If the Seller was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Subcontract Administrator, the Company may terminate this Agreement for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this Agreement, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Company may terminate the Agreement for default, disqualify the Seller from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this Agreement.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Subcontract Administrator and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Company may grant such a waiver in writing.

(f) Subcontracts. (1) The Seller shall include a clause, substantially similar to this clause, including this paragraph (f),

in subcontracts involving the performance of advisory and assistance services as that term is defined at FAR 37.201.

(2) Before the award of any such subcontracts for advisory and assistance services, the Seller shall obtain from the proposed subcontractor the disclosure required by DEAR 909.507-1 and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Seller shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Seller. If the conflict cannot be avoided or neutralized, the Seller must obtain the approval of the Subcontract Administrator before entering into the subcontract.

14. DRUG-FREE WORKPLACE. The Seller agrees not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this Agreement. "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulations at 21 CFR 1308.11 - 1308.15.

15. INSURANCE. (a) The Seller shall, at its own expense, provide and maintain during the entire performance period of this subcontract, at least the following kinds and minimum amounts of insurance:

Type		Amount
Comprehensive Liability	General	Bodily injury liability of at least \$50,000 per occurrence
Comprehensive Liability	Automobile	Minimum of \$50,000 per person and \$100,000 per occurrence for bodily injury and \$50,000 per occurrence for property damage

(b) Before beginning work under this subcontract, the Seller must certify to the Subcontract Administrator in writing that the required insurance has been obtained. The policies evidencing required insurance must contain an endorsement to the effect that any cancellation or any material change adversely affecting the Company's interest shall not be effective—

(1) For such period as the laws of the State in which this subcontract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Seller gives written notice to the Company, whichever period is longer.

16. CONSIDERATION. Company shall pay Seller the specified hourly or daily rate for such time as Seller actually performs services hereunder at the request of the Company, not to exceed dates or time-periods set forth in the Agreement period of performance. A day means a period consisting of eight hours or more in any one calendar day. For each two-hour period or fraction of such period, one quarter of said rate of compensation shall be payable. Nothing in this paragraph authorizes payment of more than the specified daily rate for any one calendar day. Except as otherwise provided herein, no portion of the daily rate will be payable (i) for time spent in travel for the Seller's convenience during an assignment or (ii)

if travel begins after 6 p.m. one day and ends before 8 a.m. the next day (local time zone) and no work was actually performed under the Agreement during these hours.

17. TRAVEL REIMBURSEMENT. If Seller is to be reimbursed for travel expenses, the Agreement will specify a dollar ceiling for such reimbursement. Seller will be reimbursed for travel expenses in accordance with the Travel Reimbursement Policy, which is incorporated by reference, up to the amount allowed by the policy or the ceiling amount, whichever is less.

18. INVOICING. (a) Seller shall be paid monthly, upon submission of an invoice in an approved form, the consideration stipulated herein less deductions, if any.

(b) Invoices shall be submitted using Company Form UCN-6573, "Consultant or Personal Services Subcontractor's Invoice for Services and/or Travel." Information for completing Form UCN-6573 is in Company Form UCN-9652, "Information for Completion of Invoice for Services and/or Travel for Consultant or Personal-Services Subcontractor." Company forms are available on the "Procurement" link at <http://www.y12.doe.gov>.

(c) Applicable IRS forms must accompany Seller's initial invoice submission. For U. S. citizens and resident aliens, IRS Form W-9, "Request for Taxpayer Identification Number and Certification" is required. Non-resident aliens must submit the applicable form in the IRS W-8 series (W-8BEN, W-8ECI, W-8EXP, or W-8IMY), and, if applicable, IRS Form 8233, "Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual." IRS forms are available at <http://www.irs.gov/formspubs/lists/0..id=97817.00.html>.

(d) Company may withhold payment hereunder until requirements of this clause are fulfilled.

19. ASSIGNMENT. Seller shall not assign rights or obligations to third parties without the prior written consent of Company.

20. RESOLUTION OF DISPUTES. (a) Seller and Company agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative disputes resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Oak Ridge, Tennessee, the parties shall share the cost of obtaining the mediator or arbiter, and each party shall bear its discretionary costs.

(b) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of legal right, the payment of money in a sum certain, the adjustment or interpretation of Agreement terms, or other relief arising from or relating to this Agreement, or the breach thereof. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim, but may be converted to a claim by the Seller as provided in paragraph (c) below.

(c) A claim by the Seller shall be made in writing, cite this clause, and be submitted to the B&W Y-12 Procurement Manager with a request for a final decision.

(d) Certification by the Seller shall be provided as follows when submitting a claim (whether on Seller's behalf or on behalf of its lower tier subcontractors) exceeding \$50,000:

"I certify that this claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Seller believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Seller."

(i) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met.

(ii) The certification may be executed by any person duly authorized to bind the Seller with respect to the claim.

(e) After receipt of a claim from the Seller, the Procurement Manager shall, within 60 calendar days, issue a written decision or notify the Seller of the date by which the decision will be made. The decision shall be final and conclusive between the parties unless the Seller files suit in the appropriate court as provided for in paragraph (f) below. Seller shall have no right to file suit prior to the date of the decision or 60 calendar days from the Procurement Manager's receipt of the claim, whichever occurs earlier.

(f)(1) Where Seller is a State agency, such as an Educational Institution, the applicable constitutional provisions or statutes that govern sovereign immunity shall dictate the appropriate forum and law governing substantive issues.

(2) In all other cases, subject to (f)(3) below, any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States Court for the Eastern District of Tennessee, Northern Division; (3) provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in either Anderson, Knox, or Roane County, Tennessee, in the Circuit or Chancery Court, as appropriate.

(g) The parties agree that, subject to (f)(1), substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution related to clauses or portions of clauses that are substantially identical in all material respects to Federal Acquisition Regulation (FAR), Department of Energy Acquisition Regulation (DEAR), or General Services Administration (GSA) clauses shall be determined, to the maximum extent practicable, in accordance with federal law as interpreted by the United States Court of Appeals for the Federal Circuit, the United States Court of Federal Claims, and the federal agency Boards of Contract Appeals. The parties further agree that, subject to (f)(1), all other substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of Tennessee.

(h) There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this Agreement pending final resolution of any dispute arising under or related to this Agreement between the parties hereto or between Seller and its sub-tier subcontractors.

21. TERMINATION. (a) The Company may terminate this Agreement for any reason in its sole discretion upon ten (10) days' advance written notice to Seller. Upon receipt of a notice of termination Seller shall terminate efforts in an orderly fashion as promptly as possible. Upon any termination, Seller shall within thirty days thereafter be paid the compensation due through the effective date of termination.

(b) This Agreement may be terminated without further liability or obligation on the part of the Company should Seller incur cost reimbursable by Company under this Agreement in excess of the total amount otherwise authorized as set forth in Section 4 above, or should the Seller breach any of the covenants of this Agreement.

22. SEVERABILITY. The obligations set forth in this Agreement are severable and divisible, and no clause or portion thereof which is not enforceable shall cause the remainder of such clause or other obligations contained herein to be unenforceable.

23 ENFORCEMENT. Failure on the part of either party (the "first party") to insist on strict compliance by the other with any provisions of this Agreement shall not constitute a waiver of the other party's obligations in respect thereof, or of the first party's right hereunder to require strict compliance therewith in the future.

24 CLAUSES INCORPORATED BY REFERENCE

(a) The clauses in paragraph (c) below are incorporated by reference. The texts of FAR clauses incorporated by reference are available at <http://www.arnet.gov/far>, the texts of DEAR clauses are available at <http://www.management.energy.gov/DEAR.htm> and the texts of Company clauses are available on the Procurement link at <http://www.y12.doe.gov>. Except as provided in (b) below, in FAR and DEAR clauses incorporated by reference, "Contractor" means Seller, "Government" means the Company, "Contract" means this Agreement, and "Contracting Officer" means Subcontract Administrator.

(b) "Government" retains its meaning in

(1) The phrases "Government property" and "Government-furnished property;" and

(2) Paragraph (a) of FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions.

(c)(1) The following clauses are incorporated into this Agreement:

- FAR 52.244-6 Subcontracts for Commercial Items and Commercial Components (DEC 2004)
- Travel Reimbursement Policy (Company FEB 2006)
- Exhibit 5 - Patent Indemnity (Company 4/84)
- Exhibit 9, Technical Data (Company-7/99)
- Security of Unclassified Controlled and Proprietary Information (JAN 2008) (Company)

(c)(2) The following clauses are incorporated if this Agreement exceeds \$10,000:

- FAR 52.222-26 Equal Opportunity (APR 2002), (The required poster is available at: <http://www.dol.gov/dol/esa/public/regs/compliance/posters/eo.htm>)

- FAR 52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998)

(c)(3) The following clause is incorporated if this Agreement exceeds \$25,000:

- FAR 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (DEC 2001)

(c)(4) The following clauses are incorporated if this Agreement exceeds \$100,000:

- FAR 52.203-7 Anti-Kickback Procedures (JUL 1995), except paragraph (c)(1)
- FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 1997)
- FAR 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)
- DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)
- Exhibit 3 - Authorization and Consent (Company 7/95)

(c)(5) The following clauses are incorporated by reference when Seller works on site at the Y-12 National Security Complex:

- DEAR 952.203-70 Whistleblower Protection for Contractor Employees (DEC 2000)
- DEAR 952.223-75 Preservation of Individual Occupational Radiation Exposure Records (APR 1984)
- Required Training (Company-11/00)
- Safety and Health (MAR 2007) (Company)
- Subcontract Administrative Requirements (FEB 2007) (Company)
- Y-12 Appropriate Footwear Policy (OCT 2005) (Company)
- Y-12 Motor Vehicle and Pedestrian Safety (MAR 2007) (Company)
- Y-12 Smoking Policy (MAR 2007) (Company)

(c)(6) The following clauses are incorporated when the work involves access to classified information or special nuclear material:

- FAR 52.227-10 Filing of Patent Applications - Classified Subject Matter (APR 1984)
- DEAR 952.204-2 Security (MAY 2002)
- DEAR 952.204-70 Classification/Declassification (SEP 1997)
- Civil Penalties for Classified-Information Security Violations (AUG 2005) (Company)
- Exhibit 7 - Classified Inventions (Company 5/80)